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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,060	07/25/2003	Sarah Maillefer	2652	4150

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EXAMINER	
VAKILI, ZOHREH	
ART UNIT	PAPER NUMBER
1614	

MAIL DATE	DELIVERY MODE
10/15/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/628,060	MAILLEFER ET AL.	
	Examiner	Art Unit	
	ZOHREH VAKILI	1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 June 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18 and 25-32* is/are pending in the application.

4a) Of the above claim(s) *1-18* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *25-32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claims 1-18 and 25-32 are presented for examination.

Applicant's Amendment filed June 3, 2009 has been received and entered into the present application. Claims 1-18 are withdrawn. Claims 25-32 are pending and are herein examined on the merits.

Applicant's arguments, filed June 3, 2009 have been fully considered. Rejections not reiterated from previous Office Actions are hereby withdrawn. The following rejections are either reiterated or newly applied. They constitute the complete set of rejections presently being applied to the instant application.

Claim Rejections - 35 USC § 103 (New Grounds of Rejection)

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 25-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stein et al. (US Pat. No. 6582679 B2) and in view of Birkel et al. (US Pat. No. 6475475 B2).

Stein et al. teach a wax product for treating or setting up a hairstyle or hairdo includes a composition containing at least one wax or wax-like substance, at least one non-volatile liquid hydrophobic oil. The wax produced is easily worked into the hair and very effectively fixes or sets the hair (see abstract). Styling wax compositions are known products for hair treatment. They particularly find application in putting short to medium length hair in a fashionable hairstyle and impart hold and luster as well as stabilize, condition and fix the hairstyle. They provide the hairstyle with shape and luster (col. 1, lines 16-21). The **wax** or wax-like substances contained in the composition in an amount of from **5 to 30** percent by weight, the liquid hydrophobic oil is preferably contained in an amount of from 5 to 30 percent by weight (col. 4, lines 60-66). Chiefly known waxes according to the state of the art can be used as the wax or wax-like in the composition according to the invention. These waxes include animal, vegetable, mineral and synthetic waxes, solid paraffins, petrolatum (Vaseline.RTM.), ozocerite, montan wax, Fischer-Topsch waxes,polyolefin waxes, such as polybutene,

bees wax, wool wax and its derivatives, such as wool wax alcohols, candela wax, carnauba wax, japan wax, Preferably at least one wax is present in the composition of the invention (col. 5, lines 35-45). Suitable vegetable oils include e.g. sunflower seed oils, coconut oil, **castor oil**, lanolin oils, jojoba oil, corn oil and soy oil (col. 6, lines 3-5). Preferred embodiments of the hair wax product of the invention include at least one **emulsifier**. The emulsifiers are preferably contained in an amount of from 0.5 to 20 percent by weight. Preferred emulsifiers are selected from the group of non-ionic surfactants. Suitable non-ionic surfactants include, e.g., addition products of 2 to 30 mol **ethylene oxide** with fatty alcohols having 8 to 22 carbon atoms; addition products of 2 to 30 mol ethylene oxide with fatty acids containing 12 to 22 carbon atoms; addition products of 2 to 30 mol ethylene oxide with alkylphenols containing 8 to 15 carbon atoms in the alkyl groups; addition products of 1 to 5 mol propylene oxide with fatty alcohols having 8 to 22 carbon atoms; addition products of 1 to 5 mol of propylene oxide with fatty acids containing 12 to 22 carbon atoms; addition products of 1 to 5 mol propylene oxide with alkylphenols containing 8 to 15 carbon atoms in the alkyl groups; fatty acid mono- and diesters having 12 to 22 carbon atoms of addition products of 1 to 30 mol **ethylene oxide with glycerol**; addition products of 5 to 60 mol of **ethylene oxide with castor oil**; and monoesters, diesters and triesters of phosphoric acid and addition products of 2 to 30 mol of **ethylene oxide with fatty alcohols** having 8 to 22 carbon atoms; or mixtures thereof (col. 6, lines 10-38). This type of composition in addition to the above-mentioned ingredients has solvents, such as water or univalent or multivalent C.sub.1 - to C.sub.2 -alcohols, especially **ethanol, propanol, glycerol** or

glycols, in an amount of up to 10 percent by weight (col. 6, lines 46-50). While the invention has been illustrated and described as embodied in hair wax products containing waxes, non-volatile oils and volatile hydrophobic materials, it is not intended to be limited to the details shown, since various modifications and changes may be made without departing in any way from the spirit of the present invention (col. 8, lines 36-41). The same components with the same concentration has the same characteristics and propertities as taught by Stein et al. and will result in the claimed invention.

Birkel et al. teach a composition packaged in an aqueous, alcoholic or an aqueous-alcoholic medium preferably with at least 10 percent by weight water. Lower alcohols with 1 to 4 carbon atoms, such as ethanol and isopropanol, can be contained (col. 4, lines 6-10). Organic solvents such as ethylene glycol, glycerol, and propylene glycol in amount of up to 30 percent by weight (col. 4, lines 13-23). The composition according to the invention can also contain cosmetic additive ingredients commonly used in hair treatment compositions, for example emulsifiers from the classes of nonionic, anionic, cationic or amphoteric surface-active substances, coconut oil, and volatile or non-volatile silicone oils (col. 4, lines 24-50). The composition according to the invention can be employed in various application forms. For example, it can be formulated as a lotion, as a non-aerosol spray solution, as a hair cream, as a **hair wax,** as a gel, as a liquid-gel, as a sprayable gel or as a foaming gel (see col. 4, lines 58-67).

It would have been obvious to one of ordinary skill in the art at the time of the

invention to have combined the teachings of Stein et al. and Birkel et al.

A person of ordinary skill in the art would have been motivated to modify Stei et al. method by further administering a higher concentration of water and alcohol as taught by Birkel et al. to produce the hair wax, because it is prima facie obvious to combine two compositions each of which is taught in the prior art to be useful for same purpose in order to form third composition that is to be used for very the same purpose; idea of combining them flows logically from their having been individually taught in the prior art; thus, the claimed invention which is a combination of two known organic solvents set forth prima facie obvious subject matter. See In re-Kerkhoven, 205 USPQ 1069.

Finally, one would have a reasonable expectation of success given that Stein et al. and Birkel et al. provide a detailed blueprint for formulating the hair wax, and the steps of which are routine to one of ordinary skill in the art.

Thus the claimed invention was within the ordinary skill in the art to make and use at the time the claimed invention was made and as a whole, prima facie obvious.

Response to Arguments

In view of new ground of rejection Applicant's remarks and arguments are rendered moot.

Conclusion

No claims of the present application are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh Vakili whose telephone number is 571-272-3099. The examiner can normally be reached on 8:30-5:00 Mon.-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Zohreh Vakili

Patent Examiner 1614 October 8, 2009

/Ardin Marschel/
Supervisory Patent Examiner, Art Unit 1614